

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

**IN RE:**

**BK RACING, LLC**

**Debtor.**

**CASE NO. 18-30241**

**CHAPTER 11**

**RESERVATION OF RIGHTS BY ATLANTIC UNION BANK  
WITH RESPECT TO AMENDMENT TO INTERIM APPLICATION  
[DOC. 71] AND APPLICATION FOR FINAL FEES AND EXPENSES BY  
THE HENDERSON LAW FIRM**

Atlantic Union Bank, formerly known as Union Bank & Trust (“AUB”), hereby files this reservation of rights with respect to the *Amendment to Interim Application for Compensation [Doc. 71] and Application for Final Fees and Expenses by The Henderson Law Firm* [Docket No. 229] (the “Application”) filed by The Henderson Law Firm (“Henderson”).

**Summary of Objection**

1. On February 15, 2018 (the “Petition Date”), Debtor BK Racing, LLC (the “Debtor”) filed for relief under chapter 11 of the Bankruptcy Code.
2. Henderson represented the Debtor in connection with the Chapter 11 filing and as counsel to the Debtor as a debtor in possession.
3. The Court appointed Matthew W. Smith as the Chapter 11 trustee (the “Trustee”) as of March 28, 2018.
4. In the Application, Henderson seeks approval of a Chapter 11 administrative expense claim in the amount of \$83,362.66 for his professional fees and expenses for representing the Debtor, net of the \$25,000 retainer Henderson received upon his retention.

5. The Application covers the period from February 13, 2018, through May 10, 2018, although substantially all of the time relates to the period from February 13, 2018, through the Court's appointment of the Trustee.

6. Other objections to the Application have been filed challenging the award sought in the Application to protect against any guarantor liability such party or related parties may have to Henderson arising from any award made by this Court. Other parties in interest may object to the Application.

7. Although nothing in the Application suggests any surcharge of AUB's collateral pursuant to § 506(c) of the Bankruptcy Code with respect to any amount sought in the Application, and AUB strongly contends that no such surcharge is proper, the Trustee previously has raised a possible § 506(c) surcharge claim without identifying the nature, extent, scope or basis of such claim. While AUB may have objections relating to, among other things, certain of Henderson's billing practices and whether the Application complies with this Court's *Guidelines for Compensation and Expense Reimbursement of Professionals* (the "Guidelines") and applicable law, AUB is willing not to pursue those objections so long as (a) none of the proceedings, findings or conclusions in connection with the Application are binding upon it in connection with any such § 506(c) claim, should it be asserted, and (b) all of its rights, arguments and defenses are reserved should any amount awarded by the Court in connection with the Application become the subject of a § 506(c) claim.

WHEREFORE, AUB requests that (A) in any order granting the Application, in whole or in part, the Court include language to protect AUB's interests, including that (i) none of the proceedings, findings or conclusions in connection with the Application are binding upon it in connection with any such § 506(c) claim, and (ii) all of its rights, arguments and defenses are

reserved should any amount awarded by the Court in connection with the Application become the subject of a § 506(c) claim, and (B) grant AUB such other and further relief as is just and proper.

This 16<sup>th</sup> day of August, 2019.

*/s/ David M. Schilli*

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing has been served via the Court's Electronic Filing System upon those parties that have registered to receive electronic service in this case as of the date hereof.

This 16<sup>th</sup> day of August, 2019.

/s/ David M. Schilli

David M. Schilli